

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**VS.**

**CRIMINAL ACTION NO. 1:05CR80-P-D**

**ANTHONY CABANISS,**

**DEFENDANT.**

**ORDER**

This matter comes before the court upon Defendants' Motions to Supplement Record on Motions to Suppress and/or for Reconsideration of Orders Denying Motions to Suppress [115-1, 116-1]. After due consideration of the motions and the Government's response thereto, the court finds as follows, to-wit:

With regard to the defendant's motion to reconsider the court's order denying his motions to suppress, the court observes as it did in its order denying the defendant's fourth motion to suppress that: "The defendant had his day in court [consisting of a lengthy hearing] regarding his arguments for suppression. The rulings upon the suppression issues came down to credibility and, as it indicated orally during the hearing, the court found the officer's testimony more credible." The defendant now wishes the court to reconsider the denial of the motions to suppress based on proffered expert testimony that could have been available during the prior hearings of the motions to suppress. The defendant cites no authority for the proposition that the court should reopen consideration of the four motions to suppress for evidence that could have been presented during the original hearings on the motions. Because the defendant does not allege that this new evidence was unavailable at the time of the hearing, the court declines to consider the evidence.

Similarly, the court concludes that the defendant's alternative motion to supplement the

record with the new evidence should be denied because the new evidence is untimely, it could have been offered at the suppression hearings, and pursuant to Fed. R. App. P. 10, the appellate record with regard to evidence can only include “the original papers and exhibits filed in the district court.”

**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendants’ Motions to Supplement Record on Motions to Suppress and/or for Reconsideration of Orders Denying Motions to Suppress [115-1, 116-1] are **DENIED**.

**SO ORDERED** this the 25<sup>th</sup> day of May, A.D., 2007.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE